

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CRIMINAL CASE NO. 2:10cr03

**UNITED STATES OF AMERICA,)
)
)
)
vs.) **PRELIMINARY ORDER
 OF FORFEITURE**
)
)
DONNIE LEE GRIFFIN.)
)
_____**

THIS MATTER is before the Court on the Government's Motion for Preliminary Order of Forfeiture [Doc. 14] and Second Motion for Preliminary Order of Forfeiture [Doc. 16].¹

PROCEDURAL HISTORY

On February 12, 2010, the Defendant was charged by bill of information with mail and bank fraud, aggravated identity theft and access device fraud, in violation of 18 U.S.C. §§1341, 1344, 1028A, and 1029. [Doc. 3]. The information contains a notice of forfeiture of property involved in the violations, property which facilitated those violations and property which is the proceeds

¹In the second motion, the Government "renews" the first motion, presumably because the Court had not yet acted on the first motion.

thereof. [Id., at 5].

On the same day, the Defendant entered into a plea agreement with Government pursuant to which he agreed to plead guilty to Counts One through Five. [Doc. 2]. The plea agreement contains the following provision:

The defendant forfeits and otherwise waives any ownership right in all property seized during the investigation of the acts alleged in the Bill of ... Information including, but not limited to, all assets specifically listed in the Bill of Indictment and all property specifically listed in the Bill of ... Information. The defendant further agrees to forfeit all interest in any additional property that is traceable proceeds of, is involved in, or is facilitating property concerning the offense(s) of conviction.

[Id., at 7].

On March 12, 2010, the Defendant attended his Rule 11 hearing and entered his plea of guilty to Counts One through Five. [Doc. 9]. The Government thereafter moved for a preliminary order of forfeiture.

DISCUSSION

Federal Rule of Criminal Procedure 32.2(b) provides in pertinent part:

As soon as practicable after a ... plea of guilty ... is accepted, on any count in an ... information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. ... The court's determination may be based on evidence already in the record, including any written plea agreement[.]

Fed.R.Crim.P. 32.2(b)(1).

The bill of information describes a scheme to commit bank fraud by entering false information onto credit applications in order to qualify for credit accounts used to acquire goods and services. In order to carry out this scheme, the Defendant used the true name of an innocent victim in order to open a credit account. The next step in the scheme involved having such credit cards mailed to the Defendant. He ultimately possessed more than fifteen counterfeit access devices used to obtain goods and services fraudulently.

The Defendant has pled guilty to bank and mail fraud which affected financial institutions. The law provides that a court shall order a person convicted of bank and mail fraud affecting a financial institution to forfeit "to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly as the result of such violation." 18 U.S.C. §982(a)(2)(A).

The Defendant has also pled guilty to aggravated identity theft. The provisions of 18 U.S.C. §982(a)(2)(A) also apply to identity theft and thus, any property constituting the proceeds of or derived from identity theft are subject to forfeiture.

In its motion, the Government specifically identifies the following items:

1. E-Tower Model 500 computer Model H0005379, s/n QFK04;

2. Dell XPS laptop w/backpack, s/n GDXC291;
3. Gateway Model 510X computer, s/n 1100407329;
4. Dell XPS, s/n HM3DZ91;
5. Dell Model WHL, s/n F275V91;
6. HP Pavilion, s/n MXU9110NJK;
7. Sony computer rechargeable battery pack, s/n VGP-PBPS12;
8. Sony digital media player, s/n 5007335;
9. Lexar 2GB thumb drive Model #N12610, s/n JDSEP2GB-00-5001;
10. Verizon thumb drive, s/n 09109748592;
11. Geek Squad 8G thumb drive;
12. Sony camera, Model #DSLR-A380 w/accessories and black bag, s/n 0501856;
13. Fargo ID card printer w/4 boxes of cards, s/n A6160323;
14. Dell small screen monitor; s/n CN-ODC323-71618-631-AJCV;
15. Geek Squad power supply, Model GS-1285U; s/n Z545X2001048;
16. Geek Squad power supply, Model GS-700U; s/n Z526P2000486;
17. Dell wide screen monitor, Model 2405FPW; s/n CN-0T6133-46633-643-31NS;
18. Dell keyboard, Model #RT7D60; s/n CN-0T6867-37172-615-009F;
19. Dell keyboard, Model #RT7D40; s/n TH-0U0097-37171-5CK-015K;

20. Bose speakers x 2; s/n 035734Z52610595BP;
21. Dymo LabelWriter 400, Model #93176; s/n 05100293176;
22. Linksys router, Model #EZXS88W, 8 port; s/n RA34061032060;
23. Motorola router, Model #SB5120; s/n 155058618801244001013006;
24. Linksys router, Model #WRT54G 2.4 GHz; s/n CDF80E644291;
25. Simple Share router; s/n 0544091561;
26. Compaq Presario, s/n SR1463CL;
27. Seagate hard drive; s/n 3LE0FRZ7;
28. Achiever security camera; s/n 1027629; w/ Kodak tripod;
29. CrossMatch fingerprint capture device; s/n 300U-0031668;
30. Topaz Systems Inc. signature pad, Siglite Model #T-S460-H5B;
31. Dell mouse, Model #M-UVDEL1; s/n HC560424122;
32. Logitech wireless mouse, Model #N231; s/n 852296-0000; PID #LZ602B6;
33. Dell wireless 1450 USB adapter; MAC #0014A58AF6A2;
34. Dell adapter; MAC #0014A58783F8;
35. CE card reader, Model #MW3170; s/n T60004C00064;
36. Dell wireless mouse; s/n LZA54601637;
37. \$10,056.00 in United States Currency;
38. Motorola I880 phone w/charger;

39. Sprint Treo phone w/case and palm charger;
40. 5 Sony DVD-R's; 1 Maxell DVD-RW; 2 Sandisk SD devices; 3 DVD-R's in Netflix envelop;
41. Motorola I876 w/charger;
42. \$84.00 United States Currency;
43. Total Rewards gift card w/\$299.98 balance;
44. Two gift cards with \$100 balance each; no exp. Date;
45. 6 Visa and 1 Mastercard check and debit cards;
46. Linksys IP phone, Model#SPA922; s/n SIN4MK00HC22451; connected to power supply, Internet access point and computer;
47. HP color laser jet printer, Model #CP2025; s/n CNBSC15285;
48. HP Office Jet Pro 8500 Premier printer w/A/C adapter; s/n MY91H2104J
49. 1 DVD-RW; 3 DVD-R's;
50. Motorola I930 w/charger and 1GB digital data card;
51. Bamboo pad w/pen, Model #MTE-450A; s/n 8KP024879;
52. Sony Vaio laptop; s/n 3103917; w/Vaio USB port and Sprint Wifi connection card, charging battery and wireless mouse.

The Defendant has agreed in his plea agreement that these items are to be forfeited. [Doc. 2, at 7]. Although it would have been preferable for the Government to have included an allegation that these specific items

constituted or were derived from the proceeds the Defendant obtained as a result of the crimes, the Court finds the admissions of the Defendant in the plea agreement as well as during the Rule 11 hearing establish a nexus between the listed property and the offense. As a result, the Court will enter a preliminary order of forfeiture as to those items.

ORDER

IT IS, THEREFORE, ORDERED that the Government's Motion for Preliminary Order of Forfeiture [Doc. 14] and Second Motion for Preliminary Order of Forfeiture [Doc. 16] are hereby **GRANTED**.

IT IS FURTHER ORDERED that the following items are hereby preliminarily forfeited to the United States for disposition according to law:

1. E-Tower Model 500 computer Model H0005379, s/n QFK04;
2. Dell XPS laptop w/backpack, s/n GDXC291;
3. Gateway Model 510X computer, s/n 1100407329;
4. Dell XPS, s/n HM3DZ91;
5. Dell Model WHL, s/n F275V91;
6. HP Pavilion, s/n MXU9110NJK;
7. Sony computer rechargeable battery pack, s/n VGP-PBPS12;
8. Sony digital media player, s/n 5007335;
9. Lexar 2GB thumb drive Model #N12610, s/n JDSEP2GB-00-5001;

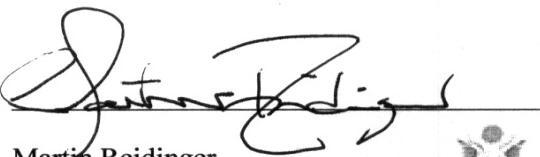
10. Verizon thumb drive, s/n 09109748592;
11. Geek Squad 8G thumb drive;
12. Sony camera, Model #DSLR-A380 w/accessories and black bag, s/n 0501856;
13. Fargo ID card printer w/4 boxes of cards, s/n A6160323;
14. Dell small screen monitor; s/n CN-ODC323-71618-631-AJCV;
15. Geek Squad power supply, Model GS-1285U; s/n Z545X2001048;
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17. Dell wide screen monitor, Model 2405FPW; s/n CN-0T6133-46633-643-31NS;
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51. Bamboo pad w/pen, Model #MTE-450A; s/n 8KP024879;
52. Sony Vaio laptop; s/n 3103917; w/Vaio USB port and Sprint Wifi connection card, charging battery and wireless mouse.

IT IS FURTHER ORDERED that the United States shall comply with all applicable substantive and procedural provisions prior to seeking a final order of forfeiture and shall provide notice thereof to the Court.

Signed: October 18, 2010



Martin Reidinger
United States District Judge

